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Practice perspectives and theoretical debates about social workers' legal powers to protect adults

Introduction

This paper explores arguments for and against increasing the legal powers for social workers have in adult safeguarding, the English term for the protection of 'vulnerable' adults. It draws on findings of a research study conducted in 2016-17, which focused on situations where social workers are obstructed from speaking in private with an adult at risk (not known to lack decision-making capacity) while conducting a safeguarding enquiry, which we term 'hinder' situations. The paper will contextualise the research findings by exploring the concepts of vulnerability and autonomy, which emerge in the literature as important in decisions about such powers (Stewart and Atkinson, 2012). The current (2018) legal position in England will be described and contrasted with the legal powers in Scotland and other parts of the world.

Background

Current legislative context and guidance

Despite a campaign by organisations such as Action on Elder Abuse (AEA) and broadly positive professional views about the need for a power of entry obtained in a consultation undertaken by the English Department of Health in 2012, the English Care Act 2014 did not introduce a legal power of entry for social workers in respect of adult safeguarding. Indeed, the Care Act 2014 repealed the National Assistance Act 1948 provision for removing an

adult to a place of safety, which was identified as breaching the Human Rights Act 1998 (Donnelly et al 2017). Currently, social workers in England do not have a simple legal power of entry in respect of adult safeguarding. However, there exist four indirect routes to gaining access in such circumstances.

First, a local council (which is responsible for adult safeguarding in England in partnership with other statutory agencies under the Care Act 2014) can bring a case to the High Court, under its inherent jurisdiction (a doctrine of English common law that allows a superior court to hear any case that comes before it, unless another court has been specifically identified in legislation as having exclusive jurisdiction). The High Court can grant the equivalent of non-molestation orders, so that if third parties continue to prevent access, they are committing an offence. However, using the High Court in these situations is reported to be expensive and slow (FitzGerald & Ruck Keene, 2014) and the use of this route, while not quantified, is rare (Ekosgen 2013).

Second, where the adult at risk of harm has mental illness, social workers can use the Mental Health Act 1983 (s115 or 135(1)), which gives a power to enter a property, if abuse or neglect of a person with mental health problems is suspected. However, there is limited awareness and use of this legal route for the purposes of adult safeguarding (Hewitt, 2009; Local Government Association & Association of Directors of Adult Social Services, 2013).

Third, the Police and Criminal Evidence Act 1984 empowers the police to enter a building: to save life or limb (s17(1)(e), or to make an arrest for indictable offences (including ill-treatment or wilful neglect) (s17(1)(b).

Fourth, where an adult at risk lacks decision-making capacity, the Court of Protection can issue orders to gain entry, to promote safeguarding under the Mental Capacity Act 2005 (MCA). The MCA 2005 is still highly relevant: for example, where it is not known whether the individual has decision-making capacity or where contact has not been made for a long period of time, perhaps due to obstruction, and decision-making capacity may well have been lost. Assessments of capacity are therefore of pivotal importance and can justify or prohibit some of the other legal approaches described above.

It is also important to consider other aspects of the legal framework for social care, which have a bearing on social work practice in cases of obstruction by a third party. First, the Care Act 2014 introduced a duty on local authorities to offer advocacy to people who would not otherwise be able to be involved in decisions made about their lives (Newbigging et al, 2017). Such advocacy could be a useful intermediary step before considering legal routes (Stevens et al, 2017a). Second, the Human Rights Act 1998 introduced a duty on all public bodies (including local councils), to act in accordance with the European Convention on Human Rights. Article 5 (Right to liberty and security) and Article 8 (Right to respect for private and family life) are of particular relevance to situations where social workers might be contemplating using legal powers to contact adults at risk.

In addition to the legal framework, adult safeguarding practice in England has been refocused by the Making Safeguarding Personal Guidance (Lawson, et al, 2014). This non-statutory guidance expects social workers to establish the goals of adults at risk and families and then plan how best to meet them, rather than simply establishing risk and developing plans to keep people safe. The emphasis on choice makes it important for social workers to consider some of the nuances in relation to autonomy we discuss in the next section.

In Scotland, social workers have a power of entry and a range of associated powers introduced by the Adult Support and Protection (Scotland) Act 2007 (ASPA). The Act introduced four protection orders, which can be used in conjunction with a power of entry. All the powers require a court order. First is an assessment order, which enables a professional to enter premises in order temporarily to remove an adult for assessment as to whether the person is at risk. Second is a removal order, which allows a professional to remove an adult at risk from premises to a place of safety for up to seven days. Third is a banning order, in which an alleged perpetrator can be banned from premises (including their own homes) for up to six months. Fourth is a temporary banning order which bans the third party for a short period to allow for applications for banning orders to be developed and the order granted. In general, these orders require the consent of the adult at risk, but if there is reason to believe that they are being unduly pressurised, they can be granted without consent and even against the expressed wishes of the adult at risk.

Internationally, a wide range of legal powers are available to social workers working on cases of suspected abuse. For example, in Canada, under Nova Scotia's Adult Protection Act

1989 social workers can obtain a court order to enter a property when obstructed while investigating suspected abuse (O'Dwyer and O'Neill, 2008). Stiegel and Klem (2007) reported that about two thirds of US states had laws to support access to and intervene to protect adults at risk in situations where third parties obstruct social workers. However, the Australian Law Reform Commission (2017) has recently recommended that a power of entry should not be introduced, preferring that social workers work with the police, using current powers, to resolve situations. Flynn and Arstein-Kerslake (2017) make the point that Ireland has little tradition of law and social work and propose a 'disability neutral' justification for intervention in the lives of all adults, including those who would be assessed as not having decision-making capacity. The legal context in these and other jurisdictions represent different positions taken on the understanding of and priority given to autonomy and the interpretation of vulnerability. In the next section, we explore arguments underpinning interpretation of these concepts in relation to decisions about legal powers.

Theoretical debates

Decisions about intervening in the lives of individuals with decision-making capacity, will be affected by assumptions about vulnerability and autonomy. Social work, the central profession in adult safeguarding practice, is underpinned by a set of values, as set out by the British Association for Social Work (BASW) (BASW, 2014), for example. Of importance for the debate about increased legal powers are general ethical principles of 'Upholding and promoting human dignity and well-being' and 'Respecting the right to self-determination' (BASW, 2014, p8). The debates about vulnerability and autonomy we describe in this section and in the Discussion, reflect a potential tension between these two values: for example,

where individuals appear to be making decisions to remain in situations where their dignity and well-being are threatened.

A key distinction is between liberal, internalist and relational, externalist views of autonomy. Liberal autonomy privileges the ability to make decisions made by individuals, assumed to be acting in their own best interests, in some sense in isolation from their social context (Oshana, 1998) although a modern liberal view aims to take social context into account (Ikonomidis and Singer, 1999). In contrast, a relational understanding assumes that autonomy can at least be limited or enhanced by the impact of social relationships, power asymmetries and structural factors. Oshana (1998) suggested that a fully relational approach to autonomy rests on an 'intuition that autonomy is incompatible with constraint- even where constraint is self-chosen and reflects a free, rational choice' (Oshana, 1998, p. 86). This can provide a justification for making judgements about more coercive interventions such as the use of a power of entry (Mackenzie, 2008) where people have capacity to make the relevant decisions. Such justifications would be more difficult under an internalist view of autonomy, in which any such breach of autonomy would not be defensible. Preston-Shoot and Cornish (2014) maintained that where undue influence could be evidenced, intervening, even without consent, could help support the adult at risk regaining full autonomy in the long-run, which suggests a more socially mediated conception of autonomy. Debates about the most appropriate approach to respecting autonomy whilst meeting the duty to protect are common to other aspects of social work (e.g. self-neglect, Braye, Orr and Preston-Shoot, 2014).

As Sherwood-Johnson (2013) and Stewart and Atkinson (2012) argued, the concept of vulnerability is also important in decisions about intervention in adult safeguarding. In one definition of vulnerability, individuals are vulnerable because of 'disability, mental disorder, illness or ... frailty' (Sherwood-Johnson, 2013: p917) or their social status, such as early childhood. Focusing on inherent characteristics, turns vulnerability into 'a permanent aspect of identity rather than a temporary situational effect' (Lonbay and Brandon, 2017, p. 79. Sherwood-Johnson (2013) and Stewart and Atkinson (2012) maintained that to impose ASPA Protection Orders without consent is to assume that adults at risk, who have decision-making capacity but are considered 'vulnerable', are inherently less resilient to pressure and thereby have weaker autonomy. Why such impairments are felt to limit autonomy and who is covered by this characterisation needs further analysis in Sherwood-Johnson's (2013) view.

The first national guidelines on adult protection in England and Wales, *No Secrets* (DH, 2000), superseded by the Care Act 2014, also made the link between impairment and an individual's inability to protect him or herself from harm (Dunn, Clare and Holland, 2008), which arises from the specific contexts in which the adult lives, characterised as 'situational' vulnerability. Current Care Act Guidance (DHSC, 2018) directs social workers, the key professionals responsible for adult safeguarding, to combine awareness of the importance of inherent characteristics (such as impairment) with an appreciation of important situational factors, such as poverty, when making decisions about intervention.

However, Lonbay and Brandon (2016) argued that the idea of vulnerability implicit in the Care Act 2014 was also based on inherent characteristics and objective understandings of risk and does not fully account for the subjective experience of vulnerability stressed by Dunn et al (2008). Sherwood-Johnson (2013) and Pritchard-Jones (2016) also maintained that consideration of the interaction of impairment and social context with structural factors, such as poverty or wealth, needs to underpin decisions about whether intervention, including use of a power of entry (or the overall need for such a power), is warranted. This is to adopt a view of vulnerability as relative to social and structural factors, in accord with Fineman's (2008) theory of vulnerability, which takes as a starting point the insight that vulnerability is a universal experience. Fineman (2008) also stressed the importance of an analysis of social and structural features that may increase vulnerability, in justifying more coercive involvement of the state in personal lives.

Thus, judgements about intervention are influenced by understandings of autonomy and the extent to which 'vulnerability' is understood to limit it. The key question concerns the balance of emphasis on objective characteristics and social context as they create vulnerability and support or undermine autonomy.

The next section describes the research on which this paper draws, and then the findings in relation to views about a power of entry and the potential need for associated powers are presented. In the Discussion section we contextualise the arguments used by participants in the research for or against a power of entry against the backdrop of these debates about vulnerability and autonomy outlined in this section.

The research

In 2016, the Department of Health commissioned the Social Workforce Research Unit to undertake research exploring practice responses to situations where social workers are prevented from accessing adults at risk, what helps in such situations and to explore views on the need for a legal power of entry. Detailed findings from the study are reported elsewhere (Stevens et al, 2017a). This paper reports and develops the findings concerning views about the need for increased legal powers for social workers.

Methods

There were three strands to this multi-method research. First was a literature review and analyses of the responses to the 2012 public consultation on the topic of powers of access, and of Parliamentary debates on proposed amendments to introduce a power of entry into the Care Bill in 2013-14 (see Manthorpe et al, 2016; Norrie et al; 2016; Stevens et al 2017b).

A detailed report of the literature search strategy and methods is available (Stevens et al, 2017a). Five bibliographic and two case law databases were searched, in addition to hand searching three relevant journals. Details of the search terms used are available from the authors. Literature since 2000 along with a selection of significant earlier publications were included. Ultimately, 147 publications were included in the initial review.

The second strand was an online survey of Adult Safeguarding Managers in England (n=27), using Survey Monkey questionnaire software, which covered views about prevalence and

asked for general views about legal powers. It was decided to use an online survey as a flexible and time efficient method which would be likely to reach the desired respondents, managers in local authorities (Evans and Makur, 2005).

Ultimately, only 27 safeguarding managers responded to the survey, which was lower than expected. This low response was achieved despite wide-ranging efforts to increase response. First, the survey was publicised by national, regional and local safeguarding leaders and networks. Second, multiple emails with personalised links were sent to 108 out of the 152 authorities, with three reminders. Third, there was a wide distribution of a generic web link to ensure full coverage and to increase response. Fourth (and finally) a call for participants was published in a *Community Care* blog (Martineau, 2016).

Table 1 shows a breakdown of the types of local authorities responding to the survey. Three responses were anonymous: of the 24 remaining responses, 10 worked in unitary authorities, eight worked in Metropolitan Boroughs, three worked in London Boroughs and three in County Councils.

Insert table 1 about here

The third strand involved in-depth interviews with a purposive sample of 37 adult safeguarding social workers (n=22) and managers (n=15) in one London Borough and two county councils (see Stevens et al, 2017a). The sample of professionals was selected to get a

broad view of practice from different levels of seniority, across the three sites. The sample size was partly determined by the limits of time and resources. However, the interviews were focused on one aspect of practice, which lowers the sample size required (Palinkas, Green and Duan, 2015).

Despite repeated efforts, it proved impossible to recruit older or disabled people with direct experience of hindering. We asked local contacts to recommend groups of older and disabled people to contact and thus recruited 11 older and disabled people (n=6) and carers (n=5) individuals direct from these groups. This provided a varied sample to give this perspective, although preferably we could have been able to recruit a slightly larger sample, again, resources and timescales limited our ability to do this.

The aim of the research was to gain accounts of experience and practice in a complex and sensitive area, for which semi-structured interviews have been found to be an ideal method (Kallio et al, 2016). Interviews were preferred over focus groups in order to get individual responses to the vignettes. In addition, we felt the vignettes could trigger distressing memories or evoke new concerns, which might have been more upsetting in a focus group.

Interviews with professionals covered perceptions of the frequency of hindering situations, practice responses and views about the possible need for increased legal powers for social workers.

Interviews with older people and carers explored their responses to a vignette (see box 1) of a hinder situation as well as asking about general views about a power of entry. This paper reports findings from this topic of the interviews and survey. Findings from other parts of the study are reported elsewhere (Stevens et al, 2017a).

Box 1 – the vignette

The fictional vignette concerned Celia, an older woman, who had physical impairments and needed support with everyday living. Her daughter, Mary, had moved in with Celia, and there were concerns about the care she gave her mother. In addition, Mary had been making it difficult for care workers to come into the house and eventually stopped their involvement altogether. The vignette was given in three separate stages, with questions asked about what the social workers should do at each stage.

Characteristics of interview participants

We recruited a range of social work participants, older people and carers by role and socio-demographic characteristics. Two thirds of interview participants were women (n=35) reflecting the demographics of social work and family carers in England, and there was a broad spread of participants of different ages and of different ethnicities (see table 1).

Insert table 2 about here

Data analysis

Only basic frequency analysis was undertaken (using SPSS v22) of the survey data because of the small sample size, to give a flavour of the opinions expressed. This involved presenting the numbers and proportions of particular answers.

All interviews were recorded, with permission, and transcribed in full (or notes taken for one disabled person and one carer who did not wish to be recorded). Interview data and answers to free text survey questions were analysed thematically, which is fundamental approach in many kinds of qualitative research (Braun & Clarke, 2006). A coding frame was developed, based on the literature, the interview guides and partly on an initial reading of transcripts and field notes. Excel spreadsheets were used to summarise data, which gave matrices of participants and themes. The research team entered quotes and notes from transcripts in each cell of the matrix. This initial process helped to develop more detailed codes and to identify more overarching themes. This approach enabled a balance of prior theorising and a grounded approach, as proposed by Meyer and Ward (2014).

Findings

Views about a power of entry and associated legal powers

Most participants were in favour of a power of entry and three of the four associated powers included in the Scottish legislation, the ASPA. About two thirds of survey respondents who answered the question were in favour of introducing three of the four legal orders available in Scotland: for a power of entry for undertaking a private interview

(14/22), assessment (15/22) or banning a perpetrator (14/22). However, slightly less than half (10/22) were in favour of orders enabling local authorities to remove an adult at risk.

We also asked the social workers and managers who took part in the interviews whether they were in favour of the same group of powers, and they responded in broadly similar ways to the survey respondents. About two thirds were in favour of introducing legal orders for a power of entry for undertaking a private interview (26/37), assessment orders (26/37) or banning a perpetrator (20/37). Again, about half (18/37) were in favour of orders to remove an adult at risk.

Nine of the 11 older and disabled people and carers taking part in the vignette interviews were also in favour of the introduction of a power of entry. The other two were undecided. Eight felt that the power could have been usefully employed (had it been available) after the first part of the vignette, with two feeling this was not appropriate and one undecided. All but one of these participants felt that a power of entry could have been used after hearing the second part of the story. The one who was unsure was in favour of the introduction of a power of entry in general.

We also asked the professional interview participants what they thought about allowing social workers to apply for any of the court orders without consent, if they were able to provide evidence that an adult at risk who has capacity was being unduly influenced by someone. Just over half (20) of the 37 participants were broadly in favour of this extra

element and about a quarter (eight) were against, with nine undecided. Many qualified their support in some way.

Reasons for supporting a power of entry and associated powers

The reasons for supporting a power of entry concerned the process of making safeguarding enquiries, mostly directly related to hindering situations. Two main reasons were given by survey respondents (in free text) and interview participants:

- Overcoming hindering
- Duress or coercion can impair decision-making

Both elements of this reasoning indicated a view about balance of factors limiting the autonomy of people who otherwise would have capacity to make their own decisions.

Overcoming hindering

The most common reason, cited by a majority (20) of professional interview participants, for supporting a legal power of entry was that this was needed to enable social workers to get in and check the welfare of the adult at risk. Many of the participants holding this view also observed that the power would only be needed in the last resort. This team manager's comment was typical, saying that a power of entry would only be used sparingly:

... in the absolute minority of cases where every strategy you use and every agency you're working with, you're not getting anywhere.

A power of entry was felt to be particularly useful by a small number (3) of professional participants where the adult at risk had capacity and there were strong concerns about potential abuse. A minority (3) of the older and disabled people who took part in the vignette interviews also felt that some form of power (here referred to as a 'higher authority') was very important. This would help them find out more clearly what was the situation and to enable Celia (the adult at risk in the vignette) to express her views, in a safe place, so that her daughter Mary could not hear, given the concerns about her treatment of Celia and suspicion that she did not have her mother's best interests at heart:

RESP: They have to get a higher authority to give them permission to go in.

INT: And what do you think they should do in, you know, if they get in?

What should happen?

RESP: Then they should interview Celia, have a chat to her on her own. That Mary hasn't to be within earshot. They have to reassure this Celia that whatever she says won't be passed on to Mary.

Older person Vignette 44

About two-thirds of the professional interview participants and survey respondents were positive about the need for three of the additional powers available in Scotland, describing

them as a potentially useful complement to a power of entry. These participants felt that implementing a power of entry without these extra powers potentially could create risks of extra harm. One manager, for example, described how considerations about making situations worse by attempting to gain access, without being able to change anything, were already part of the management of safeguarding enquiries under current English law:

So if we go in and walk out of the situation, what are we doing? You're right, if we get the power of entry but then we're not able to move it on, are we just making it worse? Again, it's really difficult. I think it's when you're in that situation, when you've weighed those risks up, if you've already had power of entry and you need to remove if we had it.

Manager 37

A minority (3) of interview participants felt that banning third parties would be useful particularly in domestic violence and 'cuckooing' cases (where a usually unrelated third party moves into an adult at risk's home and is controlling or abusing him or her). Furthermore, one survey respondent felt that a banning order would empower the police to act if the banned person returned to the home, which would help in other safeguarding cases as well. Additionally, one manager described the benefits in such circumstances, but also thought that the power should be limited to domestic violence cases.

Impact of duress or coercion on decision-making

One of the most controversial elements of the Scottish legislation is that orders potentially can be made without the consent of an adult at risk who has decision-making capacity, where it can be shown that they have been unduly pressurised to refuse consent (s 35 ASPA; Stewart & Atkinson, 2012). Indeed, some of the English routes to gaining access and intervention can also be instigated without the consent of the adult at risk, as described in the Background section of this paper. The judgements made about decision making reveal assumptions about the link between vulnerability of adults at risk and the nature of their autonomy.

Autonomy can be over-ridden under duress

Many (11 social workers and 8 managers) participants agreed that the decision-making abilities of adults at risk could be impaired by duress, even though in general these adults would be assessed as having the necessary decision-making capacity. Most of these participants agreed, therefore, with the idea of obtaining the orders without the consent of the adult at risk, in these circumstances. Being able to remove the adult at risk from the situation where they were believed to be under duress was felt likely to help him or her make autonomous decisions by many of the participants who felt that autonomy could be limited by duress:

[A] person who is the subject of coercion or psychological emotion...so probably removing person from [a] psychological point of view from the environment situation, it could give them some kind of insight...

Manager 25

Just three social workers and a manager stressed the difficulty of assessing whether an adult at risk is under duress, one indicating that they would need to approach legal services in these situations for support about the approach to be taken. Another manager emphasised the amount of 'detective work' and resources required to make this judgement in a case that was proceeding to the High Court. The focus here was on evidencing changes of mind, which were seen in this case as evidence of duress.

I think, because the lady has expressed opinions to us before that... and subsequently changed her mind, we can see that she is under duress.

Manager 08

One social worker, who was broadly in favour of the use of powers without consent, used an example relating to domestic abuse involving an adult in need of care and support, who had decision-making capacity to decide where and with whom they lived. The case illustrated the tension other social workers said they experienced in these situations. Her approach was to focus on the potential outcomes, in the light of the severity of the potential harm, but also to consider carefully the social context and history of the individual. She acknowledged that decisions to impose intervention may be unsuccessful:

I think some of it needs to be, pragmatically, if you do that, what is the outcome going to be for that person? ...I think it depends on the severity and it also depends on what the outcome is going to be.

Social Worker 42

Autonomy should be respected despite duress

A small number (7) of participants objected in principle to the idea of obtaining orders without consent of an adult at risk who has capacity, even if they suspected undue influence or coercion. These objections were placed in the context of moral and ethical concerns, social work values or human rights. This comment was typical of participants holding these views, emphasising the importance of dignity, privacy and individual autonomy:

Because the person's dignity, privacy is important...Once they've got all the information and they make their own decisions we have to respect that.

Social Worker 07

Consequently, many of these seven participants indicated they would place much emphasis on capacity assessments, and would support the right of individuals assessed to have decision-making capacity to make what some would see as unwise decisions:

I think part of that role is for us to go back assessing capacity, to determine whether the person has the ability to weigh up the information to decide to have an ongoing relationship with that person.

Social Worker 39

Reservations about introducing new legal powers

Despite the majority positive view about a power of entry and other powers, almost all the social workers and managers interviewed in the three sites and many of the survey respondents expressed reservations about the introduction of a power of entry. The reservations indicated a stronger emphasis on autonomy seen as an essential human characteristic, requiring a strong justification for overruling. Three main reservations were identified, the first only by a minority of participants:

- Impact on adults at risk and their families
- Could negatively affect social work relationships
- Lack of fit with social work practice and values

Impact on adults at risk and their families

Concern about the impact of using a power of entry on adults at risk and their families was raised by one older and disabled person and about a quarter of professional interview participants and survey respondents. Perhaps an obvious, but nevertheless significant outcome of the use of any power of entry, would be a direct, emotional impact on the people involved. This was described variously as being potentially ‘frightening’; ‘terrifying’; ‘would scare somebody to death’; ‘traumatic’; ‘horrible’; ‘stressful’.

In addition to this direct effect, a smaller number of interview participants and survey respondents felt that a legal power of entry for social work would infringe the human rights of adults at risk and their families, particularly in relation to article 5 (Right to liberty and

security) and article 8 (Right to respect for private and family life) (European Convention on Human Rights). Again, this suggests privileging individual autonomy as a characteristic over concern about the possible limitations placed on autonomy by contexts and structural factors.

Negative impact on relationships between social workers and adults at risk and families

One of the most common reservations, expressed by two older and disabled participants and 13 professional participants was that the power of entry might negatively affect relationships between social workers and adults at risk and their families. This concern was often raised by participants who were, on balance, in favour of the introduction of a power of entry as well as those who were against. For example, this service manager, who was in favour of a power of entry, offered a typical example from practice, suggesting that using a compulsory power of entry would make it much harder to work cooperatively with people and their families. Again, this suggests a stronger emphasis on autonomy of the adult at risk compared to the arguments for using legal powers:

As in all cases when we have to get into the realms of using compulsory powers in social work it's always got a bit of an unfortunate edge to it because the minute that we start to 'compulsorize' on something it's taking away whatever small degree of cooperation we might have been able to gain, but if it's balanced against life and death and somebody's safety or potential murder or real harm, I do think that it is a tool that could ultimately be used to procure somebody's safety and wellbeing.

Counter to social work practice and values

Another larger group (15) of interviewees was concerned that a legal power of entry and the associated powers available in Scotland went against social work values related to fostering autonomy in adults at risk, who could be deemed to be 'vulnerable'. A couple of social workers depicted using powers of entry and other legal powers, would be more like 'doing to', whereas the social work ethos is to attempt to 'do with'. Another social worker expressed this in terms of tipping the balance toward the 'control' from the 'care' element of social work. One manager expressed concern that the power of entry would encourage social workers to impose their own values in decisions about enforcing a legal order and intervening in a situation, and would affect the ability of people to live their own lives:

As a social worker, we have to be comfortable with other people living their lives the way that they wish to live them.

Another important social work and legal principle is to identify and implement the least restrictive option in any intervention (The College of Social Work, 2014; Local Government Association 2016). A small number of social workers and managers expressed concerns that the introduction of a power of entry might lead social workers not to pursue the least restrictive option, which was felt by many to involve developing relationships and rapport, which requires investment of time:

The only reservation I have is that somebody might use it when perhaps it wasn't needed, they haven't gone down the route, you know, of looking at least restrictive.

Social Worker 26

Discussion

In this section we contextualise the arguments used by social workers with ideas about the role of impairment, social contexts and subjective experience in relation to vulnerability and autonomy.

Increasing the legal powers available to social workers may tip the balance of their role towards control and away from care. This is always an important balance, as Weinberg (2016) asserted: 'social workers need to work "in the spaces between care and control", [this being] one of those intrinsic social work paradoxes' (Weinberg, 2016, p. 69).

Furthermore, Cooper (2015) noted that negotiation involves social workers using their undoubted power in the situation as agents of the state. Cooper commented that power and negotiation can appear to be 'hidden concepts' in practice as they are often 'tacit or unspoken' (Cooper, 2015, p. 14). Introducing further powers changes the dynamic of negotiation, as their existence will be tacitly present or explicitly a part of the process.

Almost all participants stressed the need for any power of entry to be used as a 'last resort' by social workers in high risk cases. They were concerned about the potential for such a power to be abused, or for social workers to feel pressured to use it before trying the longer and more painstaking approaches of working to build trust and develop relationships, although whether these approaches are possible in the current climate was not addressed. These concerns were also raised when discussing the more controversial aspect of the Scottish ASPA. The widely held reservations suggest the need for strong, clear management and robust processes of decision-making when invoking any power. Furthermore, the fact that many of the social workers who were in favour of (as well as those against) increased legal powers also expressed such reservations, confirms the difficulty the question raised for these social workers. Social workers in Braye et al's (2014) research on self-neglect were struggling with a very similar dilemma. It is interesting that only a small minority of older and disabled people participants raised this kind of objection to these powers. However, such objections were much more strongly represented in the DH consultation (Norrie et al, 2016) and the Parliamentary debates on the English Care Bill (Manthorpe et al, 2016).

As we argued in the introduction, different understandings of autonomy and vulnerability affect decisions about whether the use of a legal power of entry is appropriate in different circumstances. These concepts were identified as being important in the literature exploring controversial powers in the ASPA (Stewart & Atkinson, 2012) enabling social workers to apply for any of the protection orders without the consent of or even against the expressed wishes of an adult at risk who has decision-making capacity, if there is evidence that they have been unduly pressurised to refuse consent (s 35 ASPA). Similarly, Pritchard-Jones

(2016) focused on these concepts in an analysis of judgments made by the High Court in its inherent jurisdiction.

The social workers in this study referred to social work values as part of their unease about the idea of having a power of entry and particularly in relation to imposing 'protective' interventions without the consent of the adult at risk. They appear to be expressing the tensions explored in the social work literature (e.g. Donovan, Rose and Connolly, 2017; Lloyd, 2006) about the nature of autonomy. The conception of autonomy seen in thinking about social work values has developed from a liberal individual acting independently, which is universally applicable to humans, regardless of social context, to a more nuanced idea, which must be considered in social and subjective contexts. Autonomy thus loses its universal nature (Biehal and Sainsbury, 1991), which complicates social work practice, particularly in relation to assertive interventions. For example, it allows for social workers to consider whether people with capacity can be seen as being fully autonomous in situations where social contexts and particularly relationships may be challenging (e.g. undue pressure).

Limitations and strengths of this study

The main limitation of the study was the low survey response, which at 18%, was about half the average response rate for organisational surveys found by Baruch and Holtom (2008). However, a diverse group of local authorities completed the survey. Interview participants were recruited from only three local authorities, which were socio-demographically diverse, but a larger number of authorities might have increased the variety of experiences and

views expressed in interviews. While the sample is not meant to be statistically representative, the interviews with 22 social workers and 8 team and 7 service managers included a broad range of professional views and perspectives from participants with very different levels of experience. As with any interview study, the findings are based on recollection and are perhaps a limited indication of behaviour (Low, 2013). Overall, we obtained rich data from a wide range of social workers, managers and older or disabled people and carers within the three sites, which gave multiple perspectives. All research materials and the final report of the research can be downloaded from:

<https://www.kcl.ac.uk/sspp/policy-institute/scwru/res/capacity/helping-or-hindering.aspx>

Conclusion

Balancing conflicting goals of support and more assertive implementation of policy and law to defend human rights is a typical social work dilemma (Weinberg, 2016). Much of the power exercised by social workers derives from their statutory role, which for adult safeguarding in England is enshrined in the Care Act 2014. Increasing the legal powers social workers can exercise, particularly introducing powers of entry, removal or banning, may therefore alter power balance involved in negotiation (Cooper, 2015). The arguments used by social workers and some older and disabled people in this study who were in favour of further legal powers and the reservations expressed, suggest high levels of awareness of these tensions and of the risk that increased legal powers may not be incorporated into everyday practice proportionally. This suggests the need for investment in the processes of implementation of risk management and in access to legal advice if such changes are implemented, in order to facilitate good decision-making about the need to seek legal

orders. In addition, expanding access to advocacy, which is mandated by the Care Act 2014, could also serve to reduce the need for use of any increased legal powers. In the current context, there could be a value in encouraging social workers to make explicit their assumptions about the definitions of vulnerability, including the subjective experience of adults at risk, and its impact on autonomy, in their judgements about intervening in these kinds of situations. International policy development sheds light on particular resolutions to some of the dilemmas identified in the paper, underpinned by different conceptions of autonomy. Consequently, further international comparisons might be valuable in developing policy and practice in the UK.

Research ethics

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